



January 18, 2024

Via online portal: <https://requests.publiclink.hhs.gov/App/Index.aspx>

Via email: William.Holzerland@hhs.gov

William Holzerland
U.S. Department of Health and Human Services
Deputy Agency Chief FOIA Officer
Office of the Assistant Secretary for Public Affairs
Room 729H
200 Independence Avenue SW
Washington, DC 20201

FOIA Appeal: Denial of Expedited Processing for Request 24-00444-FOIA

Dear Mr. Holzerland:

I am representing John Solomon, Editor in Chief of Just the News relating to his January 2, 2024, Freedom of Information Act (FOIA) request to the Centers for Disease Control (CDC) for all records of updates and corrections relating to COVID-19 Vaccinations that are collected after the initial reports to the Vaccine Adverse Event Reporting System (VAERS), but that are not published in the public VAERS database, i.e. the “back end” system described by FDA official Narayan Nair, as quoted by the British Medical Journal in an article published in November 2023. Exhibit 1.

On January 3, 2024, the CDC stated that Mr. Solomon “failed to show that there is an imminent threat to the life or physical safety of an individual” and denied his request for expedited processing. Exhibit 2.

Because Mr. Solomon’s request fulfills the statutory and regulatory requirements for expedited processing, he now appeals the CDC’s erroneous determination.

I. Standard of Review

The FOIA mandates expedited processing when a requestor demonstrates a “compelling need.” 5 U.S.C. § 552(a)(6)(E)(i)(I). “Compelling need,” is established when “a failure to obtain requested records on an expedited basis ... could reasonably

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Washington, DC 20003

320 South Madison Avenue
Monroe, Georgia 30655

be expected to pose an imminent threat to the life or physical safety of an individual; or,” when the request is “made by a person primarily engaged in disseminating information,” there is “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(I)–(II). The Department’s regulations for evaluating requests for expedited processing mirror the FOIA statute. *See* 45 C.F.R. § 5.27(b).

II. Argument

Because Mr. Solomon is “a person primarily engaged in disseminating information,” the “compelling need” for expedited processing may be established by an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. §§ 552(a)(6)(E)(i)(I), (v)(II); 45 C.F.R. § 5.27(b)(2). The CDC denied expedited processing solely on the grounds that Mr. Solomon “failed to show that there is an imminent threat to the life or physical safety of an individual.” Exhibit 2. This is not the standard. The CDC failed to consider that Mr. Solmon is a “person primarily engaged in disseminating information” and that there was an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); 45 C.F.R. § 5.27(b)(2). Because Mr. Solmon’s request met these conditions, expedited processing must be granted.

First, Mr. Solmon is “a person primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II). As he described in his request, he is a journalist for JusttheNews.com, and he made this request in the public interest for the purpose of distilling and disseminating information. The CDC acknowledged this when it granted his request for a fee waiver. *See* Exhibit 2.

Second, there is “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). FDA official Narayan Nair acknowledged that the requested records concern actual Federal Government activity. *See* Jennifer Block, *Is the US’s Vaccine Adverse Event Reporting System Broken?*, 2023 *BMJ* 383, 2582 (available at <http://tinyurl.com/3tppes4t>). The requested information is critical to the public’s understanding of vaccine safety and efficacy. The request is “urgent” because—without access to the requested information—individuals decide everyday whether to take the COVID-19 Vaccine or additional booster shots with incomplete information about what dangers they unknowingly assume.

For example, the public VAERS database reportedly did not include an autopsy examiner’s conclusion that the death of a 15-year-old boy was caused by “stress cardiomyopathy following [his] second dose of the Pfizer-BioNTech covid-19 vaccine.” *Id.* Accordingly, there is a compelling need for the CDC to disclose the requested information on an expedited basis. Undisclosed risks presented by the vaccines, including the recent discovery of billions of DNA fragments per dose of the Pfizer and

Moderna vaccines, have caused the Florida Surgeon General to call for the halt of their use until more information is disclosed. *Press Release: Florida State Surgeon General Calls for Halt in the Use of COVID-10 mRNA Vaccines*, FLA. DEP'T OF HEALTH (Jan. 3, 2024), <http://tinyurl.com/yc7w6ucp>. Even if the standard applied by the CDC were the only standard, the urgency to expose the requested information is such that there *is* an imminent threat to the life or physical safety of the general public.

III. Conclusion

Accordingly, I request that the CDC's determination be reversed and Mr. Solomon's request for expedited processing be granted. Please contact me at michael.ding@aflegal.org for additional clarification or information.

Sincerely,

/s/ Michael Ding
America First Legal Foundation

CC: John Solomon, Editor in Chief, Just the News

Exhibit 1

Submit New Request

Requester Details

To modify request details please update your requester profile or contact the our office for assistance.

John Solomon

Editor in Chief

Just the News

[Redacted]

None

[Redacted]

Requester Default Category: News Media

General Information

Action Office	HQ
Action Office Instructions	CDC/ATSDR FOIA Office 1600 Clifton Road, N.E., MS D-54 Atlanta, Georgia 30152
Request Type	FOIA
Requester Category	News Media
Delivery Mode	E-mail

Shipping Address

Street1	[Redacted]
Street2	[Redacted]
City	[Redacted]
State	[Redacted]
State (Other)	[Redacted]
Country	United States
Zip Code	[Redacted]

Request Information

I request, under the Freedom of Information Act, all records of updates and corrections relating to COVID-19 Vaccinations—such as formal diagnoses, recovery, or death—that are collected after the initial reports to the Vaccine Adverse Event Reporting System (VAERS), but that are not published in the public VAERS database.

This is not intended to be a complex request, so I am happy to work with you to refine it if you are unsure what records would be responsive. I have included my cell phone below for convenience

The data we are specifically seeking was discussed publicly by the FDA official Narayan Nair, as quoted by the British Medical Journal in an article published in November 2023. She described the data as belonging in a "back end" system accessible to CDC and FDA officials and not in the publicly available VAERS database.

This data has enormous value to the public's understanding of vaccine safety and efficacy and how the government surveils for safety signals.

Description

The data records constitute public records as defined by law since they were gathered by government agencies as part of their official duties. And the data can be released in anonymized form to protect any medical privacy concerns of individual Americans.

I request a media fee waiver as a journalist with JusttheNews.com, which delivers old-fashioned, honest, and exclusive reporting in a neutral voice but through the modern channels of Rumble, podcasts, e-books, and social media. I make this request in the public interest for the purpose of distilling and disseminating information.

I also request expedited processing of this request because the matter is one of widespread and exceptional media interest, and I am primarily engaged in the dissemination of information to the public. Expedited processing is critical because patients, doctors, and other public users of the VAERS database may have access only to an incomplete and uncorrected version and need the requested information to make informed medical decisions.

I would like to receive the records digitally by email. If it would expedite the processing of records, I consent to the release of responsive records on a rolling basis.

Date Range for Record Search:From
Date Range for Record Search:To
Description Document

01/01/2020

01/01/2024

Fee Information

Willing Amount

\$25

Fee Waiver Requested

Yes

Fee Waiver Request Reason

I request a media fee waiver as a journalist with JusttheNews.com, which delivers old-fashioned, honest, and exclusive reporting in a neutral voice. I make this request in the public interest for the purpose of distilling and disseminating information.

Willing to Pay All Fees

Yes

Billing Address

Street1

[REDACTED]

Street2

[REDACTED]

City

[REDACTED]

State

[REDACTED]

State (Other)

Country

United States

Zip Code

[REDACTED]

Other Information

Name

John Solomon

Company

Just the News

Phone

[REDACTED]

Fax

Email Address

[REDACTED]

Street1

[REDACTED]

Street2

City

Mansasas

State

Virginia

State (Other)

Country
Zip Code

United States
20112

Expedite Information

Expedite Reason

I request expedited processing because the matter is one of widespread and exceptional media interest, and I am primarily engaged in the dissemination of information to the public. Expedited processing is critical because public health safety is involved.

Exhibit 2



Centers for Disease Control
and Prevention (CDC)
Atlanta GA 30333

January 3, 2024

Mr. John Solomon
Editor in Chief
Just the News

[REDACTED]
Via email: [REDACTED]

Dear Mr. Solomon:

The Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) received your Freedom of Information Act (FOIA) request dated January 2, 2024 (request attached). Your request assigned number is 24-00444-FOIA, and it has been placed in our complex processing queue.

Extension of Time

In unusual circumstances, an agency can extend the twenty-working-day limit to respond to a FOIA request.

We will require more than thirty working days to respond to your request because:

- We reasonably expect to consult with two or more Centers/Institutes/Offices, and
- We reasonably expect to consult with other federal Agencies.

If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, please contact the analyst handling your request Zachary Roberts at ltk2@cdc.gov or our FOIA Public Liaison, Bruno Viana at 770-488-6246. Additionally, you may contact the Office of Government Services (OGIS) to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services; National Archives and Records Administration; 8601 Adelphi Road-OGIS; College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Expedited Processing

You requested that we expedite processing your request. Your request is denied because:

- You have failed to show that there is an imminent threat to the life or physical safety of an individual.

Fee Category

Because you are considered a "News Media requester," you will not be charged fees unless you choose to receive responsive records in hard copy. (10 cents/page)

Appeal Rights

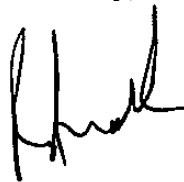
Page 2--John Solomon

You have the right to appeal the agency's expedited processing response to your request. You may file your appeal with the Deputy Agency Chief FOIA Officer, Office of the Assistant Secretary for Public Affairs, U.S. Department of Health and Human Services, via the online portal at <https://requests.publiclink.hhs.gov/App/Index.aspx>. Your appeal must be electronically transmitted by April 2, 2024.

You may check on the status of your case on our FOIA webpage <https://foia.cdc.gov/app/Home.aspx> and entering your assigned request number. If you have any questions regarding your request, please contact Zachary Roberts at ltk2@cdc.gov.

We reasonably anticipate that you should receive documents by March 25, 2024. Please know that this date roughly estimates how long it will take the Agency to close requests ahead of your request in the queue and complete work on your request. The actual date of completion might be before or after this estimated date.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Andoh', with a stylized flourish at the end.

Roger Andoh
CDC/ATSDR FOIA Officer
Office of the Chief Operating Officer
(770) 488-6399
Fax: (404) 235-1852

24-00444-FOIA